

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ella Mintz	Team: APU	CCRB Case #: 201806669	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 08/14/2018 11:12 AM	Location of Incident: § 87(2)(b)	Precinct: 40	18 Mo. SOL 2/14/2020	EO SOL 2/14/2020	
Date/Time CV Reported Tue, 08/14/2018 12:06 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 08/14/2018 12:06 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Paul Pereyra	03673	951037	PSA 7
2. POM Shawn Moynihan	03202	953147	PSA 7

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Malvi Moncion	12778	947265	PSA 7
2. POM Meldryck Lara	22592	962539	PSA 7
3. POM Omar Bhuiyan	22511	957380	040 PCT
4. POM Enders Calvo	04685	956479	PSA 7
5. POM David Sangster	28805	944168	PA UPTU
6. POM Arie Froimovich	10716	934887	040 PCT
7. SGT Roberto Dominguez	01019	938384	PSA 7
8. POF Melanie Alemany	02479	960144	PSA 7

Officer(s)	Allegation	Investigator Recommendation
A.POM Shawn Moynihan	Abuse: Police Officer Shawn Moynihan damaged § 87(2)(b)'s property.	§ 87(2)(b)
B.POM Shawn Moynihan	Abuse: Police Officer Shawn Moynihan threatened to damage § 87(2)(b)'s property.	§ 87(2)(b)
C.POM Shawn Moynihan	Discourtesy: Police Officer Shawn Moynihan spoke discourteously to § 87(2)(b)	§ 87(2)(b)
D.SGT Paul Pereyra	Abuse: Sergeant Paul Pereyra entered § 87(2)(b) in the Bronx.	§ 87(2)(b)
E.SGT Paul Pereyra	Abuse: Sgt. Paul Pereyra searched § 87(2)(b) in the Bronx.	§ 87(2)(b)

### Case Summary

On August 14, 2018, § 87(2)(b) filed this complaint on behalf of his sister, § 87(2)(b). § 87(2)(b) did not witness the incident.

On August 14, 2018 at approximately 11:12AM, § 87(2)(b) was inside her apartment, located at § 87(2)(b) in the Bronx, when she awoke to banging on the door. Police Officer Shawn Moynihan, of PSA 7, banged on the door with his asp, causing damage to the door and told § 87(2)(b) “We’re gonna take the door if you don’t open it” (**Allegations A and B- Abuse of Authority: § 87(2)(g)**). § 87(2)(b) exited the apartment and PO Moynihan spoke discourteously toward her (**Allegation C-Discourtesy: § 87(2)(g)**). Sergeant Paul Pereyra, also of PSA 7, entered and searched § 87(2)(b)’s apartment (**Allegations D and E- Abuse of Authority: § 87(2)(g)**). § 87(2)(b) was not arrested or summonsed as a result of this incident.

Paul Pereyra’s rank changed from “Sergeant” to “Police Officer” between the date of the incident and the present. He will be referenced in the report by the rank he held at the time of the incident.

The investigation obtained body-worn camera footage from PO Moynihan as well as footage from Police Officers Meldryck Lara, Enders Calvo, and Melanie Alemany (Board Review 01, 02, 03, 04, Video Summary located in Board Review 05).

An attorney was consulted in regards to this case.

### Findings and Recommendations

**Allegation A-Abuse of Authority: Police Officer Shawn Moynihan damaged § 87(2)(b)’s property.**

**Allegation B-Abuse of Authority: Police Officer Shawn Moynihan threatened to damage § 87(2)(b)’s property.**

In her CCRB interview, § 87(2)(b) stated that on August 14, 2018, at approximately 11:12 AM, she was sleeping inside of her apartment, § 87(2)(b) in the Bronx, when she awoke to officers knocking on her door (Board Review 06). She had not left her apartment prior to the officers knocking on her door. § 87(2)(b) s § 87(2)(b)-old daughter § 87(2)(b) and her brother, § 87(2)(b) were also in the apartment, all in the bedroom. When § 87(2)(b) initially heard the knocking, she assumed it was housing personnel or FDNY coming to check in on her after there was a power outage in the building. § 87(2)(b) went back to sleep and heard more banging. An officer said, “Come out or we are going to come in.” § 87(2)(b) opened the door, asked what was going on, and PO Moynihan told her to come out and he would explain. PO Moynihan then placed § 87(2)(b) in handcuffs. Following the incident, § 87(2)(b) returned to her apartment and observed two indentations with chipped paint on her door. § 87(2)(b) provided photos of her front door to the CCRB on August 14, 2018 showing these indentations on the door by the peephole (Board Review 07). She stated that this damage was not on the door prior to the officers banging on the door.

Event number #§ 87(2)(b) shows that at 10:58AM on August 14, 2018, a male called 911 and stated that his girlfriend stabbed him with a knife at the § 87(2)(b) (Board Review 08). § 87(2)(b) is located by the rear of § 87(2)(b). The male stated described the perpetrator as a black Hispanic female wearing a tank top and shorts. This description was relayed to the officers. At the 3:38 timestamp in the radio communications, an officer identified by the investigation as PO Moynihan went over the radio and stated, “I got here back here behind the building. She’s running” (Board Review 09). PO Moynihan informed the Central dispatcher that he had lost the female and described her as “a heavyset female black, blue tank top, jean shorts.” The Central dispatcher proceeded to relay this description over the radio. The Central dispatcher never relayed any information about a child being involved with the incident.

At the 11:11:25 timestamp in PO Lara’s body-worn camera, an officer goes over the radio and states that the perpetrator lived in § 87(2)(b). PO Lara asks, “How does he know that?” PO Moynihan responds, “I told him to ask the victim.” The officers walk downstairs and go to the third floor of the building, where other officers are congregating in front of § 87(2)(b). PO Moynihan bangs on the door with his fist multiple times. The sound of a child possibly crying can be heard from inside the apartment. An officer asks PO Moynihan if the female had a baby. PO Moynihan responds that she did not have a baby when she ran from him. At the same time, PO Moynihan draws his asp and bangs on the door with the asp six times. PO Moynihan states, “We’re not leaving. We’re gonna take the door if you don’t open it.” PO Moynihan bangs his asp against the door five more times. At the 11:13:13 mark in the recording, § 87(2)(b) opens the front door. PO Moynihan is depicted at § 87(2)(b)’s door for 34 seconds until § 87(2)(b) opens the door.

A screenshot taken at the 11:12:49 mark of PO Calvo’s body-worn camera footage shows § 87(2)(b)’s door prior to PO Moynihan using his asp against it; there are no visible indentations or any other visible damage (Board Review 10). A screenshot taken at the 11:17:15 mark of PO Calvo’s body-worn camera footage, taken while PO Calvo is holding the door, shows multiple indentations and discolorations to the door (Board Review 11).

In his CCRB interview on May 8, 2019, PO Moynihan stated that he responded to § 87(2)(b) § 87(2)(b) after receiving a 911 call for an assault in progress on the § 87(2)(b) (Board Review 12). A male had called 911 and stated that his girlfriend stabbed him in the arm. Central dispatched a description of the suspect as a 5’9”-5’10” heavyset Hispanic or black female with a blue tank top and shorts, carrying a small child, who fled on foot down stairs. When PO Moynihan arrived at the location, he and his partner, PO Lara, split up to canvass for the suspect. While at the rear of the building, PO Moynihan observed a heavyset female with dark frizzy hair, blue tank top, and shorts standing in the courtyard of the building, from 100-150 feet away. The female did not have a child with her. PO Moynihan could not tell what the female’s race was. PO Moynihan made eye contact with this female and at that point, she ran into the rear of the building of § 87(2)(b). PO Moynihan followed the female, but due to the power outage in the building, he lost track of her.

PO Moynihan and PO Lara went to the roof of the building and made their way down the stairs to canvass for her. While on the stairs, PO Moynihan received a radio transmission from an unidentified officer stating that the stabbing victim had reported that the perpetrator of the stabbing resided in § 87(2)(b). At this point, the victim was inside an ambulance outside of the building. PO Moynihan confirmed the apartment number over the radio three or four times. PO Moynihan and PO Lara then went to § 87(2)(b). A sergeant that PO Moynihan could not identify was already on scene; the investigation identified this sergeant as Sergeant Pereyra. PO Moynihan did not recall if he banged on the door or if someone else did. PO Moynihan did not recall if he used his fists or his asp when banging on the door. PO Moynihan did not recall seeing any damage to the door prior to him banging on it or following him banging on the door. No civilian ever complained about damage to the door. The officers banged on the door to the apartment for approximately 30 seconds to a minute prior to the door being opened. During that time, PO Moynihan said, “We’re gonna take the door if you don’t open it.” At the time, PO Moynihan did have justification in breaking the door down because PO Moynihan had information that the person inside the apartment was a felony stabbing suspect and that there was somehow a child involved. PO Moynihan stated that he would have had to have called the captain over to determine if ESU was necessary, prior to breaking down the door.

PO Moynihan stated that a show-up conducted with the victim revealed that § 87(2)(b) was not the suspect. § 87(2)(b) was then released. PO Moynihan later learned that the suspect, § 87(2)(b), § 87(2)(b) resided in § 87(2)(b) of the same building. § 87(2)(b) was arrested for the stabbing. § 87(2)(b) had a similar build to § 87(2)(b) and her hair was in a similarly poofy style as § 87(2)(b)s but she had a slightly darker skin tone. PO Moynihan noted that § 87(2)(b) and § 87(2)(b) looked very similar. PO Moynihan did not know if it was § 87(2)(b) or § 87(2)(b) who he saw in the playground.

After watching PO Lara’s body-worn camera footage during his interview, PO Moynihan acknowledged using his asp to bang against the door but denied that he caused any damage in doing so. PO Moynihan was then presented with the photo taken by § 87(2)(b) showcasing the damage to the door. PO Moynihan stated that he did not recall seeing the holes in the door, stated that he did not cause that damage, and noted that “if you look at most of the doors at NYCHA, that’s how they look. There’s marks on the doors similar to that.” PO Moynihan was asked if there was anything that he did that could have caused that damage; PO Moynihan stated that he did not want to speculate but reiterated that he did not recall causing any damage to that door.

Despite PO Moynihan stating that he did not cause damage to § 87(2)(b)s door, the contemporaneous screenshots from PO Calvo’s body-worn camera demonstrate that § 87(2)(b)s door was not damaged prior to PO Moynihan hitting it with his asp. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Officers must give due respect to property and may only damage property if doing so is reasonably necessary to carry out their duties. Onderdonk v. State, 170 Misc 2d 155 (Board Review 13).

Absent exigent circumstances, officers may not cross the entrance to a home to make a warrantless arrest. Payton v. New York, 445 U.S. 573 (1980) (Board Review 14).

The following factors are weighed to determine whether exigent circumstances exist: the gravity or violent nature of the offense with which the suspect is to be charged, whether the suspect is reasonably believed to be armed, a clear showing of probable cause to believe that the suspect committed the crime, strong reason to believe that the suspect is in the premises being entered, a likelihood that the suspect will escape if not swiftly apprehended, and the peaceful circumstances of the entry. People v. McBride 14 N.Y.3d 440 (2010) (Board Review 15).

Police may not compel a suspect to open a door by threatening to violate the Fourth Amendment by announcing that they would break down the door if the occupants did not open the door voluntarily. People v. Garvin 30 N.Y.3d 174 (Board Review 16).

To determine if officers can enter a residence under the emergency doctrine, the police must have reasonable grounds to believe that there is an emergency at hand, the search must not be primarily motivated by intent to arrest and seize evidence, and there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched. People v. DePaula 179 A.D.2d 424 (1992) (Board Review 21).

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g)

§ 87(2)(g)

**Allegation C-Dis courtesy: Police Officer Shawn Moynihan spoke discourteously to § 87(2)(b)**

§ 87(2)(b) did not allege that PO Moynihan, or any officer, used profanity during this incident. However, BWC camera footage depicts PO Moynihan using profanity while speaking with § 87(2)(b)

At the 11:13:14 mark of PO Lara's body-worn camera footage, § 87(2)(b) opens the front door of her apartment. PO Moynihan tells § 87(2)(b) to "get your ass out here right now." PO Moynihan tells § 87(2)(b) to "get your fucking hands behind your back." At the 11:13:50 mark, § 87(2)(b) asks PO Moynihan to tell her what is happening. PO Moynihan responds, "You know exactly what's happening. Chasing you through the fucking playground."

In his CCRB interview, PO Moynihan acknowledged telling § 87(2)(b) to "get your ass out here right now" and "put your hands behind your fucking back." PO Moynihan did not recall saying, "What's wrong with you, chasing through the fucking playground. I saw you" because he did not think he used "the f word." After watching the body-worn camera footage, PO Moynihan acknowledged making the statement and explained that this was a "high intensity, high stress" situation and that he was not directing the profanity toward § 87(2)(b) but the remarks were made "in the heat of the moment."

Patrol Guide Procedure 203-10 requires that officers be courteous and respectful in their interactions with members of the public (Board Review 17).

"When a police officer uses an otherwise impolite word during a stressful encounter where that officer is attempting to maintain control of the situation, the officer's verbal slip does not rise to the level of actionable misconduct." Disciplinary Case #79627/04 (Board Review 18)

§ 87(2)(g)

**Allegation D-Abuse of Authority: Sergeant Paul Pereyra entered § 87(2)(b) in the Bronx.**

**Allegation E-Abuse of Authority: Sergeant Paul Pereyra searched § 87(2)(b) in the Bronx.**

§ 87(2)(b) stated that while she was handcuffed in the hallway outside of her apartment, she saw two to three officers enter her door, but she did not know what the officers did while inside her apartment.

At the 11:13:23 mark in PO Calvo's body-worn camera footage, an unidentified officer asks § 87(2)(b) who else is in the apartment. § 87(2)(b) answered that her § 87(2)(b)-old brother and her daughter were in the apartment. At the 11:13:42 mark, Sgt. Pereyra pushes open the already open door to § 87(2)(b)'s apartment and enters. PO Calvo follows behind him. The officers announce themselves as "police" and look through the living room and kitchen area of the apartment. At the 11:14:23 mark, PO Moynihan crosses the threshold of the apartment and asks the officers if they found a blue tank top. PO Calvo goes back inside the apartment and looks around the living room and kitchen. At the 11:15:02 mark, officers discuss getting a clean shirt and shoes for § 87(2)(b). At the 11:15:08 mark, PO Alemany enters the apartment and looks in the living room. At the 11:16:12 mark, PO Lara walks into the apartment with § 87(2)(b) and asks for § 87(2)(b)'s benefit card. At the 11:17:13 mark, Sgt. Peyrera goes back into the apartment and asks § 87(2)(b) for shoes for § 87(2)(b).

In his CCRB interview, Sgt. Pereyra stated that he stepped into § 87(2)(b)'s apartment after § 87(2)(b) was in the hallway and placed in handcuffs (Board Review 19). At this point, § 87(2)(b) came outside and stated that § 87(2)(b)'s son was in the apartment. Sgt. Pereyra initially stated that he did not know why he entered the apartment but then clarified that he went into the apartment to check on the son for safety purposes. Sgt. Pereyra went into the bedroom, saw the boy in the bed and then left as Sgt. Pereyra believed he was okay. Sgt. Pereyra did not have a conversation with the child. § 87(2)(b) did not ask Sgt. Pereyra to check on the child. Sgt. Pereyra denied looking for a knife in the apartment. Sgt. Pereyra did not obtain clothes for § 87(2)(b) but an officer (Sgt. Pereyra could not recall who) obtained a shirt for her from the apartment. Sgt. Pereyra did not recall any discussion of a blue tank top and Sgt. Pereyra did not recall looking for or directing an officer to look for a blue tank top. Sgt. Pereyra estimated he was in the apartment for one to five minutes. Sgt. Pereyra did not recall searching any closets or drawers in the apartment.

After watching PO Calvo's body-worn camera footage during his CCRB interview, Sgt. Pereyra clarified that his conversation with § 87(2)(b) happened when he entered the apartment, as he turned left and goes off screen. PO Pereyra did not speak to § 87(2)(b) until he was inside the apartment. As PO Pereyra only had the conversation with § 87(2)(b) (regarding a minor in the apartment) after he entered the apartment, he clarified that § 87(2)(b) stated that there was a child in the apartment prior to his entry.

In his CCRB interview, PO Calvo stated that he and other officers entered § 87(2)(b)'s apartment to make sure everything was secure, which PO Calvo described as "standard

procedure.” Upon viewing his body-worn camera footage, PO Calvo recalled discussion of a tank top and acknowledged he was looking for a knife and a tank top.

While multiple officers entered and searched § 87(2)(b) s apartment, as Sgt. Pereyra was the supervising officer on scene as well as the first officer to enter the apartment, the investigation is pleading the entry and search against him. As the supervising officer on scene, Sgt. Pereyra was responsible for the ensuring the permissibility of the officers’ actions.

To conduct a protective sweep of a premises after an arrest, officers must possess “articulable facts, which taken together with the rational inferences from those facts, would warrant a reasonable prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene.” Maryland v. Buie 494 US 325 (1990) (Board Review 20).

To determine if officers can enter a residence under the emergency doctrine, the police must have reasonable grounds to believe that there is an emergency at hand, the search must not be primarily motivated by intent to arrest and seize evidence, and there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched. People v. DePaula 179 A.D.2d 424 (1992) (Board Review 21).

§ 87(2)(g)

[REDACTED]

#### **Civilian and Officer CCRB Histories**

- This is the first complaint in which § 87(2)(b) has been a party.
- Police Officer Shawn Moynihan has been a member of service for seven years and has been a subject in eight closed CCRB complaints and twenty allegations, of which none have been substantiated. § 87(2)(g)
- Sergeant Paul Pereyra has been a member of service for eight years and this is the first case in which he is a subject.

#### **Mediation, Criminal, and Civil Histories**

- § 87(2)(b) declined to mediate this complaint.
- As of August 9, 2019, the Office of the Comptroller has no record of any Notice of Claim filed in connection with this incident (Board Review 22).



- According to the Office of Court Administration (OCA), § 87(2)(b) does not have a criminal history (Board Review 23).

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date